

The *OUTRAGEOUS!* Tort: Intentional Infliction of Emotional Distress in the Workplace

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*You cannot have a proud and chivalrous spirit
if your conduct is mean and paltry;
for whatever a man's actions are, such must be his spirit.*

Demosthenes, *Third Olynthiac*, sec. 33

I. BEYOND FEDERAL LIABILITY FOR WORKPLACE HARASSMENT: INTENTIONAL INFLECTION OF EMOTIONAL DISTRESS

Most employers are well aware that they face a myriad of federal laws against harassment: Title VII of the Civil Rights Act¹ prohibits harassment of an employee based on race, color, sex, religion, national origin; the Age Discrimination in Employment Act² prohibits harassment of employees who are 40 or older on the basis of age; and the Americans with Disabilities Act³ prohibits harassment based on disability. These federal anti-discrimination statutes are designed to address workplace harassment that involves discriminatory treatment of employees. What is less recognized, however, is the growing body of state law in which employees are seeking redress for workplace harassment based on the common law tort of intentional infliction of emotional distress (IIED). Even if employers are able to successfully navigate through the minefield of federal legislation designed to protect employees from workplace harassment, they may find themselves defending against a state law claim for IIED.⁴ Employers are well advised to consider their legal liability for what is becoming increasingly known as “workplace bullying.”⁵

The standard for actionable behavior varies from state to state, yet the workplace contexts that give rise to IIED claims are relatively consistent. As will be discussed in this article, IIED claims are made for a wide range of acts, including criticizing job performance; transferring an employee within a company; using rude, demeaning and vulgar language; imposing stressful working conditions; conducting investigations; and

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¹ 42 U.S.C. § 2000e, *et seq.* (2000).

² 29 U.S.C. § 621, *et seq.* (2000).

³ 42 U.S.C. § 12101 *et seq.* (2000).

⁴ See generally Regina Austin, *Worker Resistance, and the Tort of Intentional Infliction of Emotional Distress*, 41 STAN. L. REV. 1 (1988).

⁵ See, e.g., David C. Yamada, *The Phenomenon of ‘Workplace Bullying and the Need for Status- Blind Hostile Work Environment Protection*, 88 GEO. L. J. 475 (2000). Campaign Against Workplace Bullying a California-based nonprofit organization, provides advice to individuals who feel that they are the target of workplace bullying, including directing them to publications that suggest ways of redress such as Gary Name and Ruth Namie, *The Bully at Work: What YOU Can Do to Stop the Hurt and reclaim Your Dignity on the Job* (2000).

terminating employment.⁶ Courts, however, tend to be reluctant to sustain such claims unless the acts are clearly “extreme and outrageous.”⁷ As a general rule, plaintiffs have been successful in maintaining a claim for IIED: if there is a pattern of continuing behavior (especially if related to sexual harassment), if there is a retaliatory motive for the behavior, or if there is an awareness of a plaintiff’s particular susceptibility to emotional distress.⁸ Across the country, courts have tended to set a high standard for the kinds of acts that constitute the basis of IIED claims. Yet, even in states that are notoriously favorable to employers - such as Georgia - liability is being imposed. Using cases from Georgia and selected cases from other states⁹ to illustrate the categories of behavior that frequently form the basis of IIED claims, this article is designed to create a framework of inquiry for employers who are concerned about potential liability.

II. General History of IIED

The most basic legal statement used by courts for guidance with regard to IIED claims is the *Restatement (Second) of Torts* which provides “[o]ne who by extreme and outrageous conduct intentionally or recklessly causes severe emotional distress to another is subject to liability for such emotional distress, and if bodily harm to the other results from it, for such bodily harm.”¹⁰ In an attempt to elucidate the meaning of “extreme and outrageous conduct,” the comment to the *Restatement* notes that liability typically rests only where the conduct has been so outrageous in character, and so extreme in degree, as to go beyond all possible bounds of decency, and to be regarded as atrocious, and utterly intolerable in a civilized community. Generally, the case is one in which the recitation of the facts to an average member of the community would arouse his resentment against the actor, and lead him to exclaim, “Outrageous!”¹¹

Moreover, “liability clearly does not extend to mere insults, indignities, threats, annoyances, petty oppressions, or other trivialities . . . plaintiffs must necessarily be expected and required to be hardened to a certain amount of rough language, and to occasional acts that are definitely inconsiderate and unkind.”¹² The comment to the *Restatement* also elaborates on the requirement that “severe emotional distress” must result for the behavior to be actionable. Noting that “emotional distress” “includes all highly unpleasant mental reactions, such as fright, horror, grief, shame, humiliation, embarrassment, anger, chagrin, disappointment, worry and nausea,” liability only arises

⁶ See discussion *infra* Section III.

⁷ See discussion *infra* Section II.

⁸ See discussion *infra* Section IV.

⁹ The cases selected are intended to present a representative sample of the kinds of situations which prudent employers should consider as having the potential to give rise to an IIED claim.

¹⁰ RESTATEMENT (SECOND) OF TORTS § 46(1) (1965).

¹¹ *Id.* cmt. d.

¹² *Id.*

when “it is extreme.”¹³ Under the *Restatement*, the law should only intervene “where the distress is so severe that no reasonable man could be expected to endure it.”¹⁴ In making such a determination, key factors include the “intensity and duration of the distress.”¹⁵

A. Special Relationship: The Workplace Dynamic

By its very nature, the workplace can create close conditions in which the intensity and duration of the alleged distress is exacerbated. The existence of a special relationship in which there is “abuse of a position, or a relation with the other, which gives [the actor] actual or apparent authority over the other, or the power to affect [the] interests”¹⁶ of another may “produce a character of outrageousness that otherwise might not exist.”¹⁷ To illustrate the point, the *Restatement* notes that such a relationship may exist when dealing with “police officers, school authorities, landlords, and collecting creditors” who abuse their position.¹⁸ Even though the *Restatement* does not include any examples involving an “abusive work environment,”¹⁹ the employer-employee relationship can be and, indeed, is viewed as one in which there exists the requisite inequity of bargaining power.

The workplace “is not a free zone in which the duty not to engage in willfully and wantonly causing emotional distress through the use of abusive or obscene language does not exist.”²⁰ As one court elaborated, making the special context of the workplace clear by its very nature, [the workplace] provides an environment more prone to such occurrences because it provides a captive victim who may fear reprisal for complaining... and it presents a hierarchy of structured relationships which cannot easily be avoided. The opportunity for the commission of the tort is more frequently presented in the workplace than in casual circumstances involving temporary relationships.²¹ This dynamic can create a situation in which certain acts take on a more egregious connotation than if they were committed by “strangers.””” For this reason, “some States

¹³ *Id.* cmt. j.

¹⁴ *Id.*

¹⁵ *Id.*

¹⁶ *Id.* cmt. e.

¹⁷ *Bridges v. Winn Dixie*, 176 Ga. App. 227, 230, 335 S.E.2d 445,447 (1985).

¹⁸ RESTATEMENT (SECOND) OF TORTS § 46 cmt. e (1965).

¹⁹ See Yamada, *supra* note 5, at 508.

²⁰ *Coleman v. Housing Authority of Americus*, 191 Ga. App. 166,169,381 S.E.2d 303,306 (1989).

²¹ *Id.*; *cf.* *Herman v. United Brotherhood of Carpenters*, 60 F.3d 1375 (9th Cir. 1995) (construing Nevada law to preclude claims for emotional distress in the context of employment).

²² See, e.g., *Blongv. Snyder*, 361 N.W.2d312, 316 (IowaCL App. 1984); *Whitev. MonsantoCo.*, 585 So.2d 1205, 1209-10 (La. 1991); *Harris v. Jones*, 380 A2d 611,615-16 (Md. 1977). See generally^Dennis P. Duffy, *Intentional Infliction of Emotional Distress and Employment at Will. The ase gams “Torification” of Labor and Employment Law*, 74 B.U. L. REV. 387,412-13 (1994).

consider the context and relationship between the parties significant, placing special emphasis on the workplace.”²³

B. The Development of Four Key Elements of IIED

To evaluate the severity of the allegedly offensive behavior, a number of state courts, including Georgia, have elaborated on the *Restatement* definition by developing a four-prong test for IIED:

1. the conduct must be intentional or reckless;
2. the conduct must be extreme and outrageous;
3. there must be causal connection between the wrongful conduct and the emotional distress; and
4. the emotional distress must be severe.²⁴

Plaintiffs’ claims most frequently fail because courts do not find that the conduct at issue is “extreme and outrageous.” Because there is no clear definition of what constitutes actionable conduct, the parameters of the IIED tort are in the process of being formed by case law. As such, the following survey of cases from the employment context is designed to give employers a sense of the kind of behavior that is alleged in the context of an IIED claim and the requisite level of behavior necessary for a plaintiff to sustain and prevail on such a claim.

III. CONDUCT DEEMED NOT ACTIONABLE

Courts have set a high bar as to what constitutes actionable extreme and outrageous conduct in the workplace. The fact scenarios in IIED claims vary from nearly innocuous behavior to seemingly egregious acts yet, in each of the following cases, the court held in favor of the employer. In general, these cases can be seen as illustrating behavior that occurred in the everyday context of work. That is, in connection with foreseeable - albeit sometimes unpleasant - aspects of employment. One caveat is appropriate to note; to the extent that behavior of the kind described in this section is continuing or part of a pattern, courts look to the cumulative effect and may impose liability.²⁵

²³ *Atchinson v. Buell*, 480 U.S. 557, 569 (1987).

²⁴ *See Johnson v. Savannah College of Art & Design*, 218 Ga. App. 66, 67, 460 S.E.2d 308 (1995) (citing *Bridges v. Winn Dixie*, 176 Ga. App. 227, 335 S.E.2d 445). Regarding a similar breakdown of elements in other states, *see e.g.*, *Womack v. Eldridge*, 210 S.E.2d 145, 147 (Va. 1974); *Harris v. Jones*, 380 A.2d 611, 614 (Md. 1977); *Kroger Co. v. Willgruber*, 920 S.W.2d 61, 65 (Ky. 1996); *Travis v. Alcon Labs*, 504 S.E.2d 419, 425 (W. Va. 1998).

²⁵ *See discussion infra* Section IV.

A. Criticizing Job Performance

Inasmuch as candid evaluations of job performance are generally desirable to apprise employees of their standing, straightforward evaluations are encouraged in the workplace. The Georgia Court of Appeals, however, recently enlarged the scope of what is permissible when it issued a very harsh opinion for employees regarding the degree to which an employer can criticize an employee's job performance.²⁶ In *Jarrard v. UPS*,²⁷ Michael Jarrard sued his employer, UPS, for IIED resulting from a "stinging evaluation of his job performance" on his first day back from six weeks of medical leave for psychiatric care.²⁸ In a "twenty-page evaluation form covering numerous topics, Jarrard received grades of two or three on a scale of zero to six" for the three-month period preceding his medical leave; in prior evaluations, Jarrard's ranks were "primarily ranks of five or six."²⁹ The court provides more insight into what happened by clearly describing the context of the evaluation:

Even though the evaluating UPS supervisor knew that the leave had been for psychiatric care, and even though during the interview Jarrard repeatedly begged in tears that the evaluation be postponed because of his mental weakness, the supervisor insisted, on penalty of termination and with a smirk, that Jarrard remain and receive the full oral review of the written evaluation, which took about 20 minutes. The supervisor questioned his loyalty and integrity.³⁰ Moreover, despite its acknowledgment that the "harsh evaluation was apparently in retaliation for past conflicts between Jarrard and management" - a fact that frequently gives rise to a claim for IIED - and the fact that "Jarrard experienced a complete mental breakdown from which he has not recovered," the court found in favor of UPS. In so holding, the court stated that "[performance evaluations are a recognized aspect of any employment' and regardless of their brutal harshness do not constitute extreme and outrageous conduct . . . giving a poor job evaluation-however stressful to the employee-must be held to be an expected, common business event that does not constitute extreme and outrageous conduct."³² Further solidifying its position and establishing a standard for future cases, the court stated that the

law is clear that performance evaluations critical of an employee do not fall into the outrageous category even though (i) given in crude and obscene language, (ii) done with a smirk, (iii) conducted in a belittling, rude, and condescending manner to embarrass and

²⁶ *Jan-ard v. UPS*, 242 Ga. App. 58, 529 S.E.2d 144 (2000).

²⁷ *Id.*

²⁸ *Id.* at 58, 529 S.E.2d 144 at 146.

²⁹ *Id.*

³⁰ *Id.*

³¹ *Id.*

³² *Id.* at 60 (quoting *Wiggins v. Browning*, 1994 U.S. Dist. LEXIS 20229, Civil Action No. 6 94 1552-3 (D. S.C. 1994)).

humiliate the employee, (iv) given at a poor time, (v) tinged with intent to retaliate for former conflicts, and (vi) constituting a false accusation of dishonesty or lack of integrity.³³ The ultimate conclusion of the court is that “there is nothing inherently outrageous with subjecting an employee to a straightforward if harsh evaluation of his job performance, regardless of its timing.”³⁴ Thus, under *Jarrard*, “a single brutal evaluation cannot rise to the ‘outrageous’ level even though the employee is experiencing emotional problems at the time of the evaluation and the employer is aware of such.”³⁵

In less egregious circumstances, Georgia courts have likewise held in favor of the employer. For example, in *ITT Rayonier v. McLaney*³⁶ the court found that plaintiff’s supervisor was “highly critical” of his performance and that there was evidence that the supervisor “employed crude and obscene language” in connection with his criticism, but that this behavior did not give rise to a claim for IIED.³⁷ Likewise, in *Biven Software v. Newman*³⁸ a jury verdict in favor of the employee’s IIED claim was overturned.³⁹ In *Biven*, the court found that the language used by the employer consisted either of expressions of dissatisfaction with plaintiff’s job performance or suggestions that if she did not improve her job performance that she might be terminated.⁴⁰ Evidence was presented at trial that showed that defendant spoke to plaintiff “in a rude and condescending manner, belittled her, [and] was critical of her work.”⁴¹ None of this, however, was found to rise to a level sufficient to constitute outrageous conduct.

B. Transferring An Employee Within the Company

Likewise, job transfers within a company are generally not viewed as harsh enough to form the basis of an IIED claim.⁴² In *Sossenko v. Michelin Tire*, the plaintiff founded his complaint on eleven incidents, the majority of which involved “advice and warnings” when he “complained of various job transfers he underwent within the

³³ *Id.* at 60 (citations omitted).

³⁴ *Id.* at 62.

³⁵ *Id.* Cautious employers should not be too sanguine about this opinion. As is discussed *infra* in connection with actionable cases in which there are allegations of retaliation and/or an employer is aware of a plaintiff’s particular susceptibility, *Jarrard* seems out of step with Georgia law. The fact that this was viewed as merely a single incident perpetrated in the context of an employment review does not necessarily preclude an action for IIED if the evaluation subjects an employee to “rigors of job evaluations” that exceed the scope of those that “all other employees experience.” See *Jarrard* at 63.

³⁶ *ITT Rayonier v. McLaney*, 204 Ga. App. 762, 420 S.E.2d 610 (1992).

³⁷ *Id.* at 763, 420 S.E.2d at 611.

³⁸ *Biven Software v. Newman*, 222 Ga. App. 112, 473 S.E.2d 527 (1996).

³⁹ *Id.*

⁴⁰ *Id.* at 114, 473 S.E.2d at 530 (citing *Sossenko v. Michelin Tire Corp.*, 172 Ga. App. 771, 772, 324 S.E.2d 593 (1984)).

⁴¹ *Id.*, 473 S.E.2d at 529.

⁴² See, e.g., *Burden v. General Dynamics Corp.*, 60 F.3d 213 (5th Cir. 1995) (holding that an employee’s reassignment to a new job which involved tasks substantially similar to employee’s original position was insufficient to maintain a claim for IIED).

corporation.”⁴³ Even though Sosscenko alleged that the incidents took place alkr he “reported alleged defects in certain experimental test tires manufactured by Michelin that as a result of these threats, he was intimidated into remaining silent, became unable to perform his job duties, and suffered mental stress which led to the breakup of his marriage,” the court affirmed the lower court’s dismissal of plaintiff’s claims on a motion for summary judgment.⁴⁴

In another case, *Bowers v. Estep*,⁴⁵ a trial court likewise dismissed the plaintiffs claim for IIED on summary judgment, refusing to find liability for a job transfer.⁴⁶ In *Bowers*, the plaintiff “began experiencing severe claustrophobia and depression” which he claimed that his supervisors knew about and then “intentionally harassed, threatened, intimidated, and belittled him and maliciously changed the conditions of his job, causing him to take a leave of absence” and to be admitted to a psychiatric clinic.⁴⁷ On appeal, the court affirmed the lower court ruling on plaintiff’s IIED claim, stating that “[s]uch actions, even if done in a manner that embarrassed or humiliated [plaintiff], cannot be characterized as the type of shocking and outrageous behavior necessary for the recovery of damages.”⁴⁸

C. Using Rude, Demeaning and Vulgar Language

In many instances, courts tend to follow the sentiment expressed in the *Restatement* that even in the case of a special relationship, the actor should not be held liable for “mere insults, indignities, or annoyances that are not extreme or outrageous.” Moreover, there is “no occasion for the law to intervene in every case where someone’s feelings are hurt” because there “must still be some freedom to express an unflattering opinion, and some safety valve must be left through which irascible tempers may blow off relatively harmless steam.”⁴⁹

Many cases are brought by employees who were subjected to rude, demeaning and vulgar language in the workplace. In *Cooler v. Baker*,⁵¹ plaintiff complained that while she was employed at a construction company she was offended by “foul and abusive language [directed] to her in the presence of others.”⁵² She specifically testified that the defendant would greet her with the unsavory salutation “hi, wench, how you doing. I he

⁴³ 172 Ga. App. at 772, 324 S.E.2d at 594.

⁴⁴ *Id.* at 771, 324 S.E.2d at 594.

⁴⁵ *Bowers v. Estep*, 204 Ga. App. 615, 420 S.E.2d 336 (1992).

⁴⁶ *Id.*

⁴⁷ *Id.* at 616, 420 S.E.2d at 337.

⁴⁸ *Id.* at 618, 420 S.E.2d at 339.

⁴⁹ RESTATEMENT (SECOND) OF TORTS § 46, cmt. e (1965).

⁵⁰ *Id.* cmt. d.; see generally Yamada, *supra* note 5 at 494-97, and the discussion of *Denton v. Chittendon Bank*, 655 A2d 703 (Vt. 1994); *Mirzaie v. Smith Cogeneration, Inc.*, 962 P.2d 678 (Okla. U. App. 1998); *Crowley v. North American Telecommunications Ass’n*, 691 A2d 1169 (D.C. 1997); *Holloman v. Keadle*, 931 S.W.2d 413 (Ark. 1996).

⁵¹ *Cooler v. Baker*, 204 Ga. App. 787, 420 S.E.2d 649 (1992).

⁵² *Id.*

⁵³ *Id.*

court held that “the use of the word ‘wench’ to refer to plaintiff does not rise to the level of outrageousness necessary to support a claim” and, moreover, that the plaintiff was “not severely offended” by the use of the term “wench” to refer to her.⁵⁴ In another case in which a legal secretary based her IIED claim on four instances of her employer “glaring at [her] with purported anger and contempt, crying, slamming doors, and snatching phone messages from [her] hand,” the court found the behavior to be “childish and rude,” but “not the type of behavior for which the law grants remedy.”⁵⁵ The mere allegation that an employer’s acts caused a plaintiff to feel “betrayed, belittled, maligned, humiliated, and saddened” does not rise to the level of actionable behavior for IIED.⁵⁶

Many of the cases in which courts have refused to impose liability turn on offensive behavior that occurs in what might be deemed part of working in an environment where people are rude. In *Hodor v. GTE Mobilnet*,⁵⁷ however, the appeals court affirmed summary judgment in favor of the employer based on facts which clearly exceed what an employee might expect to be part of regular employment.⁵⁸ In this recent case, the plaintiff suffered from “trigeminal neuralgia, an excruciatingly painful facial nerve condition.”⁵⁹ Due to this disorder, plaintiff was required to take medical leave; after her return, plaintiff’s supervisor “joked on numerous occasions that plaintiff ‘had to eat baby food.’”⁶⁰ This remark was found to be “hilarious” by co-workers; there was also testimony that plaintiff’s supervisor “mocked and ridiculed plaintiff regularly in the presence of other employees.”⁶¹ Plaintiff found this behavior to be “demeaning,” but the court did not agree, stating that “however rude and insensitive” the supervisor’s statements may be, they “do not, as a matter of law, rise to the requisite level of egregious or outrageous behavior which justifiably results in that severe fright, humiliation, embarrassment, or outrage which no reasonable person is expected to endure.”⁶²

Likewise, there are instances in which harsh statements made to an employee *after* leaving a defendant’s employment are not extreme or outrageous. In *Lively v. McDaniel*,⁶³ the plaintiff sued his former manager for, *inter alia*, IIED alleging that the defendant had “misrepresented facts to three individuals concerning” plaintiff’s actions as an insurance agent.⁶⁴ The conversations consisted of the following kinds of comments: that plaintiff had left the insurance company on “bad terms and had taken documents with him,” that plaintiff was soliciting former clients, that plaintiff had “made the worst decision of his life in leaving the company,” and that “the insurance policies of some widowed and elderly clients” previously serviced by plaintiff would probably lapse because he “had left the

⁵⁴ *See id.* at 788, 420 S.E.2d at 651.

⁵⁵ *Turnbull v. Northside Hospital, Inc.*, 220 Ga. App. 883, 884-85, 470 S.E.2d 464, 466 (1996).

⁵⁶ *Johnson v. Savannah*, 218 Ga. App. at 67, 460 S.E.2d at 309.

⁵⁷ *Hodor v. GTE Mobilnet, Inc.*, 244 Ga. App. 297, 535 S.E.2d 300 (2000).

⁵⁸ *See id.*

⁵⁹ *Id.*

⁶⁰ *Id.*

⁶¹ *Id.*

⁶² *Id.* (quoting *Komegay v. Mundy*, 190 Ga. App. 433, 434, 379 S.E.2d 14 (1989)).

⁶³ *Lively v. McDaniel*, 240 Ga. App. 132, 522 S.E.2d 711 (1999).

⁶⁴ *Id.*, 522 S.E.2dat712.

company no records about them.”⁶⁵ Rejecting plaintiffs claim, the court found that none of the statements “suffices to sustain a cause of action for intentional infliction of emotional distress.”⁶⁶ The court further noted that “[d]efamatory or derogatory remarks regarding one’s employment generally do not rise” to the level of extreme and outrageous conduct necessary to maintain a claim.⁶⁷

In another case, *Moses v. Prudential Insurance Co.*,⁶⁸ even a statement tinged with physical threats failed to state a claim for IIED. ⁶⁹ After plaintiff contacted one of his former employer’s customers, plaintiffs former supervisor left the following message on plaintiffs telephone answering machine: “Mark, this is Jeff. I just want to tell you not to screw around with the Prudential clients again, and especially like the trick you tried to pull on your Pru Pep case, or you are going to find your butt in court or your neck broken somewhere.”⁷⁰ After considering “the totality of the circumstances . . . including the language used in the offensive message, the means by which the message was delivered to plaintiff and the relationship of the parties” the court concluded that “the threatening and offensive language used in this instance could not have reasonably and foreseeably resulted in the mental distress of which [plaintiff] complains because the offending message did not, as a matter of law, rise to the requisite level of outrageousness and egregiousness.”⁷¹

D. Imposing Stressful Working Conditions

Not surprisingly, most claims based on “garden variety” on-the-job stress also do not support a claim for IIED. Courts recognize that the workplace can be a competitive, high-stress environment and refuse to impose liability merely because an employee experiences emotional distress. Consistent with the *Restatement*, to be actionable, the conduct at issue must be extreme and outrageous. In many cases, the allegation regarding stressful working conditions in the context of a claim for IIED is accompanied by other allegations. Even in these instances, however, courts have refused to impose liability. For example, in *Odem v. Pace Academy*,⁷² plaintiff based his IIED claim on allegations that, the headmaster of defendant was rude “on two occasions, once when he presented the list of probationary requirements in a loud, forceful voice and the second time when he had an outburst after [plaintiff] told him that he has consulted with an attorney about the list, at times [plaintiffs] discussions with school employees were very emotional and intense, and he “suffered stress, humiliation, embarrassment and worry” allegedly as the result of these

⁶⁵ *Id.* at 132-33, 522 S.E.2d at 712-13.

⁶⁶ *Id.* at 134, 522 S.E.2d at 713-14.

⁶⁷ *Id.*

⁶⁸ *Moses v. Prudential Insurance Co.*, 187 Ga. App. 222, 369 S.E.2d 541

⁶⁹ *Id.*

⁷⁰ *Id.* at 223,369 S.E.2d at 542.

⁷¹ *Id.* 225-26, 369 S.E.2d at 544.

⁷² *Odem v. Pace Academy*, 235 Ga. App. 648, 510 S.E.2d 326 (1998).

stressful working conditions.⁷³ As one might suspect, these allegations were not sufficient for plaintiff to maintain his claim.⁷⁴

Similarly, in *Biven Software v. Newman*,⁷⁵ the appeals court overturned a jury verdict, because the case failed to rise to the “requisite level of outrageousness.”⁷⁶ In *Biven*, evidence was presented at trial supporting plaintiff’s claim that her employer “spoke to her in a rude tone and condescending manner, belittled her, was critical of her work, and imposed unreasonable deadlines.” Plaintiff also testified that she was under “great stress” because she “worked long hours and had to leave a number where she could be reached at all times.”⁷⁷ Under these opinions, it is clear that employees are expected to endure run-of-the-mill workplace stress.

E. Conducting Investigations

Consistent with the notion that employees do not need to be insulated from merely uncomfortable situations in the workplace, employers are generally permitted to conduct reasonable investigations regarding possible wrongdoing by employees.⁷⁸ In the *Biven* case, plaintiff also attempted to base her IIED claim on the fact that her former employer filed criminal charges against her, “alleging that she had destroyed valuable computer files on the day of her discharge when she was permitted to take personal information from the computer.”⁷⁹ Because the magistrate hearing the criminal matter found probable cause to issue an arrest warrant for the crime of computer trespass, plaintiff’s claim for IIED based on the criminal prosecution was foreclosed.⁸⁰

Employers may also require an employee to submit to a polygraph examination in the course of an “in-house” investigation. In *Bridges v. Winn Dixie*,⁸¹ plaintiff, a part-time cashier, brought a claim for IIED after being required to submit to a polygraph test.⁸² Following considerable losses sustained over a twenty-month period, defendant undertook

⁷³ *Id.*

⁷⁴ *See id.*

⁷⁵ *Biven Software v. Newman*, 222 Ga. App. 112, 473 S.E.2d 527 (1996).

⁷⁶ *W*, all14, 473 S.E.2dat529.

⁷⁷ *Id.*

⁷⁸ *E.g.* *Santiago-Ramirez v. Secretary of Dept, of Defense*, 62 F.3d 445 (1* Cir. 1995) (holding evidence that an employer accused employee of theft and detention of the employee for 45 minutes, during which time employee was questioned and told that her conduct of leaving work premises with merchandise would be reported to the FBI if she did not cooperate, was not sufficient to state a cause of action for IIED). There are, however, limits to investigations as evidenced by the capriciousness in the well-known case of *Agis v. Howard Johnson Co.*, 355 N.E.2d 315 (Mass. 1976). In that case, the restaurant manager held a meeting with waitresses at which he said someone was stealing from the restaurant and until the identity of the person could be established he would fire all of the waitresses in alphabetical order; plaintiff was then summarily dismissed because her name begins with “A.” *See id.*

⁷⁹ 222 Ga. App. at 113, 473 S.E.2d at 529.

⁸⁰ *Id.* at 113, 115, 473 S.E.2d at 529-30.

⁸¹ *Bridges v. Winn Dixie*, 176 Ga. App. 227, 335 S.E.2d 445 (1985).

⁸² *See id.* at 227, 335 S.E.2d at 446.

a security investigation, which included submitting employees to polygraph examinations.⁸³ When plaintiff arrived for her polygraph test, she informed defendant and the polygraph examiner that she had been diagnosed with multiple sclerosis, and inquired as to “whether the condition or the medication she was taking might distort or otherwise invalidate the results of the examination.”⁸⁴ When the reply was in the negative, plaintiff executed the release forms; at the conclusion of the examination, plaintiff was informed that her response to the question concerning “unauthorized discounts had indicated deception.”⁸⁵ A dispute then ensued in which plaintiff grew “angry, upset, and ‘hysterical’ and used strong language” and defendant’s security manager allegedly called plaintiff a “damn liar.”⁸⁶ Finding that plaintiff’s “language and her tone of voice were at least as bellicose and lacking in delicacy” as defendant’s acts, the court held that plaintiff failed to make out a *prima facie* case for intentional infliction of emotional distress.⁸⁷

In another case, *Peoples v. Guthrie*,⁸⁸ a jury found in favor of a plaintiff’s IIED claim based on an accusation of cheating on a test in connection with her employment, and awarded her \$62,000 in damages.⁸⁹ On a motion for judgment notwithstanding the verdict, the trial court struck the damage award, and the appeals court affirmed, stating that “the evidence does not support” such an award. Key facts in the case included evidence that while plaintiff was taking her exam, defendant asked plaintiff to remove her purse from the desk, then demanded to look inside the purse. When plaintiff refused, defendant accused her of cheating. There was no evidence plaintiff was, in fact, cheating and the test was not the type of test on which one could not cheat.⁹⁰ Moreover, the court expressed its belief that the “compensatory award for slander redresses” defendant’s actions in broadcasting the accusation of cheating and that plaintiff “is not to receive double recovery on account of [defendant’s] conduct in making other persons aware of [the] accusation.”

F. Terminating Employment

IIED claims based primarily on emotional distress resulting from termination of employment have been squarely rejected by the courts. Even under circumstances which are seemingly unjust, there must be some accompanying behavior which is resoundingly “extreme and outrageous” to be actionable. Inasmuch as terminating “employees is an everyday fact of life in a market economy, especially one in which the rule of at-will employment is dominant” this judicial response is not surprising.⁹¹ Many cases address this

⁸³ *Id.*

⁸⁴ *Id.*

⁸⁵ *Id.* at 228, 335 S.E.2d at 446.

⁸⁶ *Id.*

⁸⁷ *Id.* at 231, 335 S.E.2d at 448-49.

⁸⁸ *Peoples v. Guthrie*, 199 Ga. App. 119, 404 S.E.2d 442

⁸⁹ *Id.*

⁹⁰ *Id.* at 119-120, 404 S.E.2d at 443.

⁹¹ *Id.* at 121, 404 S.E.2d at 444.

⁹² *Yamada*, *supra* note 5 at 504.

issue,⁹³ and one court even went so far as to state that termination would not be actionable under IIED even if it were Christmas and the employee is fired by an employer who knows that the employee may be experiencing holiday depression.⁹⁴

IV. ACTIONABLE CONDUCT

After considering the litany of behavior that is generally not actionable, it would nonetheless be unwise for employers to summarily conclude that courts are not willing to impose liability for IIED in the workplace. Even though the facts of such cases tend to vary dramatically, there are several categories of behavior that stand out as likely to be “extreme and outrageous” conduct, and therefore actionable.

A. Pattern of Continuing Behavior

In several cases, courts have been willing to find that a claim for IIED exists where there is a pattern of continuing behavior. In such cases, courts look to the “totality of the circumstances;” if there is a severe cumulative effect, liability will likely be imposed.⁹⁵ One very good example is *Anderson v. Chatham*⁹⁶ In this case, plaintiff had worked for the defendant for four years prior to her termination⁹⁷ During this time, plaintiff found her employer to be “very emotional, very vindictive, and very cruel when angry” and, during the end of her employment, plaintiff was subjected to “very inconsiderate, very rude, very temperamental, and very emotional behavior.”⁹⁸ In one specific instance in connection with plaintiff’s termination, the defendant allegedly told her to “just get your stuff and leave . . . don’t try to sue me . . . if you have any thoughts about trying to sue me . . . you’re going to be playing with the big boys and you are going to be sorry . . . you either take what I’m offering you and give up the rights to the bonuses and everything else, or you leave

⁹³ See, e.g., *Lane v. K-Mart Corp.*, 190 Ga. App. 113, 114, 378 S.E.2d 136 (1989); *Borden v. Johnson*, 196 Ga. App. 288, 291, 395 S.E.2d 628, 630 (1990); *Odem v. Pace Academy*, 235 Ga. App. at 655, 510 S.E.2d at 332; *Biven Software v. Newman*, 222 Ga. App. at 114, 473 S.E.2d at 530; *Clark v. Coats & Clark*, 990 F.2d 1217, 1229 (11th Cir. 1993). See also *Marques v. Fitzgerald*, 99 F.3d 1 (1st Cir. 1996) (holding an employer’s termination of an employee just days shy of the probationary period was not outrageous conduct); *Atkinson v. Denton Pub. Co.*, 84 F.3d 144 (5th Cir. 1996) (rejecting a claim for IIED even when the employer abruptly terminated a long-standing employee without notice and where employer published false and defamatory reasons to co-employees within the company about the termination); *Harvey v. Strayer College, Inc.*, 911 F. Supp.

24 (D.D.C. 1996) (rejecting a claim for IIED in connection with job termination where a pregnant employee was summoned, confronted and questioned about her ability to do her job, and where employer knew that employee’s earlier pregnancies had resulted in hospitalization).

⁹⁴ See *Jarrard*, 242 Ga. App. at 62, 529 S.E.2d at 149.

⁹⁵ See, e.g., *Bristow v. Drake Street, Inc.*, 41 F.3d 345 (7th Cir. 1994) (permitting a claim for IIED by an employer who subjected the employee to a protracted series of “outrages that included firing [and promptly rehiring the employee] between 12 and 40 times . . . yelling at her, following her around at work, stalking her during non-work hours, banging on the door of her apartment late at night, calling her ten to thirty times at night, and leaving messages on her telephone answering machine that he hated her and wished her dead”).

⁹⁶ *Anderson v. Chatham*, 190 Ga. App. 559, 566, 379 S.E.2d 793, 799 (1989).

⁹⁷ *Id.* at 566, 379 S.E.2d at 799.

⁹⁸ *Id.*

... you better not look to me for any reference of any kind or you'll be sorry."⁹⁹ Plaintiff, who had an ulcer at the time, was "very upset by the encounter, did not sleep well for a few nights, vomited, and took medication for the ulcer and nerves."¹⁰⁰ The court found that "[w]hile the objected-to language might not, taken in isolation, rise to a level of conduct actionable under the law for emotional distress, viewing the encounter with [defendant] in the totality of the circumstances does not show a failure of the cause of action as a matter of law."¹⁰¹ Moreover, the court noted that the plaintiff and defendant had a "lengthy working relationship," which could be construed to produce "a character of outrageousness that otherwise might not exist."¹⁰² As such, the appeals court held that the trial court "did not err in permitting a jury to consider plaintiffs damages for emotional distress and in entering a judgment on the jury's determination that [defendant's] conduct constituted the tort"¹⁰³

A similar result was reached in *Lightening v. Roadway Express, Inc.*¹⁰⁴ in which the court cited *Anderson v. Chatham*¹⁰⁵ with approval. There, as in *Anderson*, the court considered the "totality of the circumstances," which included supervisors subjecting plaintiff to verbal abuse on numerous occasions and in the presence of other employees.¹⁰⁶ A sampling of the remarks and incidents reveals the level of denigration to which the plaintiff was subjected: "Look at this piece of shit down there [referring to plaintiff]"; calling plaintiff a "sorry son of a bitch"; calling plaintiff at home telling him to resign; and spitting on plaintiff.¹⁰⁷ One of the final incidents came after plaintiff confided to management employees that there was only one supervisor, Mark Keahon, who treated him with decency. The following day, Keahon criticized plaintiff's work, and refused to allow plaintiff to call the union steward, responding "Fuck the union steward. Get your sorry ass out of here."¹⁰⁸ During his last days in defendant's employment, plaintiff suffered from "a psychotic episode including manifestations of paranoid delusions" which occurred "on an evening when managers had 'chewed out'" plaintiff on three separate occasions. Plaintiff's claim for IIED was further supported by testimony that defendant would engage in "mad-dogging" - efforts by managers to provoke and demean an employee they wanted to quit - and that management's treatment of plaintiff was so severe that a union steward had never seen a worker similarly treated.¹¹⁰

⁹⁹ *Id.*

¹⁰⁰ *Id.*

¹⁰¹ *Id.* at 567,379 S.E.2d at 800.

¹⁰² *Id.*

¹⁰³ *Id.*

¹⁰⁴ *Lightening v. Roadway Express, Inc.*, 60 F.3d 1551 (11th Cir.

¹⁰⁵ 190 Ga. App. 559, 379 S.E.2d 793 (1989).

¹⁰⁶ 60 F.3d at 1554-55.

¹⁰⁷ *See id.*

¹⁰⁸ *Id.*

¹⁰⁹ *Id.* at 1555.

¹¹⁰ *See id.*

In a recent case, *Johns v. Ridley*,¹¹¹ the Georgia Court of Appeals held that the trial court did not err in denying defendant's motion for summary judgment on plaintiff's IIED claim. In support of her claim, plaintiff submitted an affidavit alleging "36 separate occurrences of harassment" occurring during a period of just over one year.¹¹² Four things were specially noted as indications of outrageousness: (a) the length and continuity of defendant's alleged course of conduct; (b) the intent behind the conduct, specifically defendant's intent to "punish" plaintiff; (c) the position of authority and control defendant held over plaintiff; and (d) the specific instances of harassment involving defendant's veiled threat to kill plaintiffs "dog and stuff it in her mailbox and his act of standing up, leaning over her desk, and drawing back his fist to hit her."¹¹³ Rejecting the employer's argument that each incident was a "separate occurrence," the court considered the totality of the events. Looking at everything together, the court held that "reasonable persons might find the presence of extreme and outrageous conduct resulting in severe emotional distress."¹¹⁴ In each of these three cases, the totality of the circumstances formed a critical basis for the court's decision in favor of the plaintiff/employee. Similarly, where there is evidence of sexual harassment, courts have been willing to uphold IIED claims. In fact, "[r]eference to sexual harassment as a categorization of employer/supervisor misconduct is perhaps the most often recognized claim under a theory of IIED."¹¹⁵ One significant case is *Coleman v. Housing Authority of Americus*¹¹⁶ in which it was alleged that plaintiff's supervisor sexually harassed her "through conversation, innuendo and body language . . . over the course of three years."¹¹⁷ According to the plaintiff, her supervisor would: "call her into his office on business then inexplicably veer off into personal matters about sex;" show her "cartoons of a sexual nature," inquire as to how plaintiff and her husband have sex and whether they had tried an act depicted in one of the cartoons; "sought to engage her in conversation about masturbation and sexual practices of black women;" and "proffered her a video about black women having sex together."¹¹⁸ Acknowledging that "[standing alone, some of the incidents [plaintiff] related would not amount to actionable infliction of emotional distress by way of sexual harassment," but that the "repetition, over her protests, could be found to have had a cumulative effect" the court upheld plaintiff's claim.¹¹⁹ In so

¹¹¹ *Johns v. Ridley*, 245 Ga. App. 710, 537 S.E.2d 746 (2000).

¹¹² *Id.*

¹¹³ *Id.* at 714-15.

¹¹⁴ *Id.* at 715.

¹¹⁵ *Nicholas v. Allstate Insurance Company*, 2000 La. LEXIS 2169 (court, Aug. 31, 2000) (citing *Prunty v. Arkansas Freight Ways, Inc.*, 16 F.3d 649 (5th Cir. 1994)); *Barb v. Miles, Inc.*, 861 F. Supp. 356 (W.D. Pa. 1994). *See generally* *Yaniada supra* note 5 at 500-01, and the discussion regarding *Soto v. El Paso Natural Gas Co.*, 942 S.W.2d 671 (Tex. Ct. App. 1997); *Kanzler v. Renner*, 937 P.2d 1337 (Wyo. 1997). It should also be noted that where there is evidence of racial animus, it can serve to buttress an IIED claim and contribute to the outrageousness of the acts. *See e.g.*, *Taylor v. Metzger*, 706 A.2d 685 (N.J. 1998); *Bernard v. Doskocil Companies*, 861 F. Supp. 1006 (D. Kan. 1994) (noting that a cumulative barrage of racial slurs and physical threats, including a threat to set the employee afire, may constitute "extreme and outrageous conduct").

¹¹⁶ *Coleman v. Housing Authority of Americus*, 191 Ga. App. 166, 381 S.E.2d 303 (1989).

¹¹⁷ *Id.* at 167-68, 381 S.E.2d at 304-5.

¹¹⁸ *Id.* at 168, 381 S.E.2d at 305.

¹¹⁹ *Id.* at 169, 381 S.E.2d at 306.

doing, the court emphasized that “the injury is exacerbated by the repetition” and that the effect of this behavior “can be particularly acute in an employment setting.”¹²⁰

Another example of the court upholding an IIED claim where there was evidence of sexual harassment is *Trimble v. Circuit City Stores, Inc.*¹²¹ In this case, plaintiff’s immediate supervisor repeatedly sexually harassed her, including “unwanted touching, lewd comments and gestures, and other similar acts” such as hugging plaintiff, rubbing up against her body, and gesturing in a manner that made plaintiff uncomfortable.¹²² The supervisor also “ridiculed [plaintiff] in front of other employees, telling them that she did not wear underwear” and allegedly placed his hands down inside her shirt under the “pretext of inspecting her clothes to meet store requirements.”¹²³ After plaintiff reported these incidents to the store manager, who merely warned the supervisor, the harassment continued.¹²⁴ Specifically, the supervisor scheduled “long hours for her,” denied “her requests for days off,” and asked another employee if he was “doing” plaintiff.¹²⁵ Because the store did not take any action after plaintiff again reported the behavior, plaintiff filed an EEOC charge.¹²⁶ Thereafter, defendant “continued its pattern of intentional harassment, including deliberately altering and removing her sales figures upon which commissions were figured, requiring [plaintiff] to work extremely long hours with no days off, ordering her to lift television consoles in excess of 25 pounds, refusing to compensate her for overtime, and forcing her to perform price comparisons at competitors more often than other sales personnel, reducing her volume of commission sales.”¹²⁷ As part of its determination that plaintiff met the requirement of outrageousness necessary to sustain a claim for IIED, the court noted that the employer’s conduct toward plaintiff, “if proven, could be construed as a threat to [her] health (requiring [her] to work extremely long hours with no days off and to lift in excess of 25 pounds) and her livelihood (altering her sales figures and forcing her to perform price comparisons so that she could not make commissions).”¹²⁸ Based on these facts, the court held that plaintiff’s allegations satisfied the pleading requirements necessary to state a claim for IIED.

B. Retaliation

Another important aspect of the *Trimble* case is the fact that it appeared that plaintiff’s employer retaliated against her “for filing an EEOC claim and that such retaliation ... was outrageous.”¹²⁹ Evidence that an employer’s conduct is the product of

¹²⁰ *Id.*

¹²¹ 220 Ga. App. 498, 469 S.E.2d 776

¹²² *Id.*

¹²³ *Id.*, 469 S.E.2d at 777.

¹²⁴ *Id.*

¹²⁵ *See id.* at 498-99, 469 S.E.2d at 777-

¹²⁶ *See id.*

¹²⁷ *Id.* at 499, 469 S.E.2d at 778.

¹²⁸ *Id.* at 501, 469 S.E.2d at 779.

¹²⁹ *Id.* At 502, 469 S.E.2d at 780

retaliation generally raises a red flag with courts and militates in favor of an employee bringing an IIED claim. This is precisely what happened in *Yarbray v. Southern Bell Telephone & Telegraph Co.*,¹³⁰ in which the plaintiff worked in defendant's personnel department, "where she investigated employment discrimination claims and administered guidelines for the selection and promotion of management personnel."¹³¹ When the plaintiff was passed over for a promotion to supervisor, she filed an employment discrimination suit against the defendant; while her case was pending, plaintiff was called to be a witness in a similar case that was filed by another one of defendant's employees.¹³² Before her testimony, defendant's counsel told the plaintiff that "he expected her to tell the truth and 'he hoped that this would not affect [her] job.'"¹³³ Plaintiff then testified in the other matter, describing "what she perceived to be discrimination at the company;" thereafter, plaintiff was transferred to another division which she viewed as "a demotion to a meaningless position where she was underused, undervalued, and abused by her supervisor."¹³⁴ Plaintiff claimed that she was threatened that she would lose her job if she testified against her employer and, that after she testified, defendant retaliated by relegating her to an unsatisfactory position. Plaintiff's claim for IIED was dismissed by the trial court. Reinstating plaintiff's claim, the appeals court stated:

The fact that Southern Bell deliberately set out to retaliate against [plaintiff], and to punish her for ignoring its lawyer's admonitions and testifying against the employer, which retaliation included subjecting her to abuse by her supervisor and causing her severe emotional pain, if proved, would meet the threshold which reasonable persons would consider outrageous and extreme conduct and would be sufficient to subject the company to damages. Thus, if [plaintiff] supports these contentions, a jury issue is presented.¹³⁵

This position is consistent with the general view that courts are much more likely to sustain a cause of action for IIED for behavior that exceeds what might be considered reasonable and foreseeable aspects of employment.¹³⁶

¹³⁰ *Yarbray v. Southern Bell Telephone & Telegraph Co.*, 261 Ga. 703, 409 S.E.2d 835, 836 (1991).

¹³¹ *Id.*

¹³² *See id.*

¹³³ *Id.*

¹³⁴ *Id.*

¹³⁵ *Id.* at 706, 409 S.E.2d at 838.

¹³⁶ *See, e.g., Harris v. Proctor & Gamble Cellulose Co.*, 73 F.3d 321 (11th Cir. 1996) (holding an employer's threats and retaliatory activities satisfy the requisite element of outrageousness to support an IIED claim); *see generally Yamada, supra* note 5 at 497 and the discussion of *Vasarhelyi v. New School for Social Research*, 230 A.D.2d 658 (N.Y. App. Div. 1996). If, on the other hand, the employer's acts are merely "tinged with the intent to retaliate for former conflicts," such conduct may not rise to the level of extreme and outrageous conduct necessary to maintain an IIED claim. *See Jarrard*, 242 Ga. App. at 60, 529 S.E.2d at 147 (citing *Sossenko*, 172 Ga. App. 771, 324 S.E.2d 593 (discussing retaliation for reporting manufacturing defects)).

C. Awareness of a Plaintiff's Particular Susceptibility

If an employer commits acts against an employee knowing that the employee is particularly susceptible to emotional distress, such will trigger liability for IIED. According to the *Restatement (Second) of Torts*, the

extreme and outrageous character of the conduct may arise from the actor's knowledge that the other is peculiarly susceptible to emotional distress, by reason of some physical or mental condition or peculiarity. This conduct may become heartless, flagrant, and outrageous when the actor proceeds in the face of such knowledge, where it would not be so if he did not know.¹³⁷ On the other hand, to be actionable, the conduct must constitute a "major outrage;" "the mere fact that the actor knows that the other will regard the conduct as insulting, or will have his feelings hurt, is not enough."¹³⁸

V. Prevention: Developing a Comprehensive Anti-Harassment Policy

Based on the developing law in the realm of workplace IIED claims, employers should take measures to prevent actionable harassment. With this in mind, employers should consider the following four major factors in an effort to free the workplace from harassment and avoid liability.

• Maintain a General Policy Statement Defining Prohibited Conduct

A general policy statement that articulates the goal of having a positive and productive work environment, free from all forms of harassment is essential. Workplace harassment should be clearly defined as any behavior that a reasonable person would view as intimidating, hostile and abusive, including offensive comments pertaining to sexuality, gender, sexual orientation, race, national origin, age, disability, and religion. Moreover, employers should have a definite policy regarding sexual harassment, defining the same as unwelcome sexual advances, requests for sexual favors, and other verbal or physical behavior of a sexual nature when: 1) submission to such conduct is made either explicitly or implicitly a term or condition of an individual's employment or is used as a basis for any employment decision; or 2) such behavior is unwelcome and has the effect of unreasonably interfering with an individual's work performance or of creating an intimidating, hostile or offensive working environment. Overall, the policy should affirm the basic right of

¹³⁷ Restatement (Second) of Torts § 46 cmt. f (1965); see also *Williams v. Voljavec*, 202 Ga. App. 580, 581, 415 S.E.2d 31, 33 (1992). Cf. *Jarrard*, 242 Ga. App. at 62-63, 529 S.E.2d at 149, in which the employer knew that plaintiff had just returned from medical leave for extended psychiatric care, and court allowed the employer to take a head-in-the-sand approach to this knowledge stating: "when, as here, the employee returns to the job with a medical evaluation that sets forth no restrictions and states that he is medically stable, then the employer (who has no medical degree) cannot be expected to exempt that employee from the same rigors of job evaluations that all other employees experience." *Id.*

138 Restatement (Second) of Torts § 46 cmt. f (1965).

employees to a safe and humane working environment in which they will be treated at all times with dignity, respect and fairness.

*

- **Implement Effective Reporting Procedures**

Employees should know that they are responsible for notifying a designated person (such as a supervisor or someone in Human Resources) of any harassing behavior that they have been subjected to or have witnessed. Reports or incidents should be handled with an appropriate degree of confidentiality that will be disclosed to others only on a need- to-know basis.

- **Investigate Claims and Enforce the Anti-Harassment Policy**

Investigation of harassment claims should be unbiased, fair, and may include someone from outside of the company to conduct the investigation. Employees making good faith reports of workplace harassment should be informed that they will not be subjected to any retaliation.

A clear policy regarding a range of ways that the company is prepared to remedy a situation involving harassment, including how perpetrators of harassment will be disciplined, is essential. Upon cause shown, employers must actually enforce the antiharassment policy, including following through with any disciplinary procedures.

- **Entourage a Positive Workplace**

Equally important with having an anti-harassment policy is actively encouraging the respectful treatment of employees by supervisors and co-workers. Procedures for performing evaluations, which may include witnesses, should be clearly defined and designed to be a constructive review of performance. Any behavior that appears to unreasonably interfere with a person's work performance, including workplace "bullying" (the deliberate repeated, hurtful verbal mistreatment of a person) should be actively discouraged.

VI. Conclusion

Workplace stress, indeed the kind that can lead to extreme and outrageous behavior, is increasingly in the news. Recently, the entire front page of the Marketplace section of *The Wall Street Journal* was devoted to workplace stress.¹³⁹ The headlines are indicative of the tension that pervades many workplaces: "Can Workplace Stress Get Worse?" "Incidents of 'Desk Rage' Disrupt America's Offices" "At Verizon Call Centers, Stress is Seldom on Hold" and "Mergers Often Trigger Anxiety, Lower Morale."¹⁴⁰ Longer hours, increased workloads, and market fluctuations all are contributing to aggressive workplace behavior.

¹³⁹ See generally THE WALL ST. J., Jan. 16, 2001 at B-1

¹⁴⁰ *Id.*

Overly stressed employees can create two forms of intertwined liability: employees who have reached the breaking point are potential perpetrators of harassment and employees who are the victims of the abuse are potential IIED claimants. In addition to maintaining and enforcing an anti-harassment policy, employers are urged to watch for the warning signs that an employee cannot cope. Possible indicators of extreme stress include: skipping group lunches or meetings, coming to work late, calling in sick, distancing from colleagues, and obsessing about seemingly insignificant matters or isolated incidents.¹⁴¹ Moreover, workplace stress consultants can also be called upon to defuse volatile settings, to create environments where stress is alleviated and to advise managers about warning signs that an employee is overly stressed. In general, supervisors and managers should be aware of such distress signals and address the situation before legally actionable conduct is unleashed in the workplace.

Inasmuch as courts are likely to impose liability for IIED claims if there is a pattern of extreme (especially sexually harassing) behavior, if there is a retaliatory motive for the behavior or if there is an awareness of a plaintiff's particular susceptibility to emotional distress, enforcement of a comprehensive anti-harassment policy which addresses these issues can go a long way to free the workplace from harassment and avoid liability for IIED claims.

¹⁴¹ *Incidents of 'Desk Rage' Disrupt America's Offices*, THE WALL ST. J., Jan. 16, 2001 at B-1.